

**In the United States Patent and Trademark Office
Before The Board of Patent Appeals and Interferences**

Reply Brief

Serial Number: 10/032,535

Appn. Filed: 01/02/2002

First-named Inventor: Shaw, John C.

Appn. Title: Method and System for Facilitating Secure Transactions

Examiner/GAU: Oyebisi, Ojo / 3696

REBUTTAL ARGUMENT

I. THE SEC REFERENCE HAS A MESSAGE-SENDING COMPONENT – BUT IT IS DIFFERENT THAN THE ONE DEFINED IN APPLICANT'S CLAIMS.

The Examiner concedes that the SEC/LimiTrader reference sends its match message to only one party, not both parties. Answer at 19, lines 16 et seq. The Answer states that:

“The examiner perceives the dialing up of the participant that entered the existing order as taught by SEC to constitute the message sending component disclosed by the applicant.” Answer at 19, lines 19-21.

The Examiner’s perception is wrong, however. Sending the match message to just one party does not constitute the message sending component defined in the claims. Applicant’s claims define that Applicant’s system/process sends the match message to both contraparties, not just one:

“generating a prospective transaction message including the transaction indication corresponding to each of the matching entries, and further providing the prospective transaction message to the user locations associated with said corresponding user identities.” Claims 52, 62, 105, 115, 148, and 158, emphasis supplied.

The corresponding user identities are, of course, the contraparties to the prospective transaction – as made clear by the earlier language in these claims, and throughout Applicant’s disclosure. Indeed, this is a key point of Applicant’s invention – i.e., notifying both contraparties so that one contraparty cannot gain a knowledge advantage over the other. See Applicant’s Published Appl. at paragraphs 0007, 0010, 0016, 0022, 0023, 0030, et al.

In sum, Applicant’s claims 52, 62, 105, 115, 148, and 158 clearly define that the match message (prospective transaction message) is sent to both contraparties, not just one of them. Neither the SEC/LimiTrader reference nor Gutterman meet this important claim element.

II. THE SEC REFERENCE DOES NOT DISCLOSE THE MATCH MESSAGE CONTENT DEFINED IN THE CLAIMS.

The Examiner’s Answer contends that Applicant “shifts the premise of his argument” by arguing that the SEC reference does not disclose the match message content defined in the claims. Answer at 20, lines 4-5. However, Applicant is not shifting its argument at all – rather,

Applicant argues that match message content is an additional way in which the SEC/LimiTrader reference differs from the claimed invention.

The Answer goes on to state: “LimiTrader notifies the counterparty that the orders have matched. In other words, the content of the notification is a message that says ‘the orders have matched’.” Answer at 20, lines 8-9.

However, Applicant’s claims 52, 62, 105, 115, 148, and 158 define the match message content as being more than just “the orders have matched”. These claims define the match message (prospective transaction message) as including:

“the transaction indication corresponding to each of the matching entries”

Applicant’s disclosure describes that the transaction indication can contain information such as the amount of the item, the side of the transaction (buy or sell), and any applicable time limits. See Applicant’s Published Appl. at paragraphs 0075, 0076, 0142, et al.

In sum, in Applicant’s invention and claims, the prospective transaction message is more than just a message saying “the orders have matched”. Neither the SEC/LimiTrader reference nor Guterman disclose such a message.

III. THE SEC REFERENCE’S STATEMENT OF GENERAL SECURITY OBJECTIVES DOES NOT MEET THE SPECIFIC DATA SECURITY COMPONENT DEFINED IN THE CLAIMS.

The Examiner’s Answer contends (page 20, line 14 et seq.) that the SEC reference’s mention of preventing unauthorized access to LimiTrader meets the following, very specific data security component defined in claims 52, 62, 105, 115, 148, and 158:

“restricting access to any given prospective transaction entry, even if unmatched, to (i) the user identity corresponding to the given entry; and (ii) the user identities corresponding to the other entries in any of said sets of entries that includes the given entry.”

However, the SEC reference’s description merely states LimiTrader’s general security objective. The SEC reference does not disclose how the LimiTrader system achieves its general objective – i.e., the specific system components and method steps used. There are many different ways to achieve a given security objective, and thus it cannot be presumed that LimiTrader goes about this in the same way that is defined in Applicant’s claims.

In fact, the “one-sided notification” that LimiTrader uses has significant negative implications for data security and confidentiality. After receiving the information that a match to his order exists, an existing-order party can opt not to respond and not negotiate (see SEC ref. page 3: “If the holder of an existing order does not wish to negotiate, no action is required.”). The existing-order party – and any other existing-order party notified by LimiTrader – thus gets valuable information that someone is selling what he’s buying, or vice-versa, without the contraparty ever knowing anything. This last point was raised in Applicant’s Appeal brief, and the Examiner’s Answer does not at all address it or attempt to rebut it.

IV. THE ANSWER CONCEDES THAT RUNNING AN INTEGRATED OMS OVER REGULAR TELEPHONE LINES MIGHT BE SUBOPTIMAL DUE TO SLOWNESS AND LINE NOISE.

The Examiner’s Answer tries new arguments concerning whether an Order Management System (OMS) and the LimiTrader matching system can be integrated effectively using dial-up connections over standard phone lines. Answer at 21-22. The Answer states that integrated OMS is nothing but a trading application, that the LimiTrader is a 16-bit application, and that integrated OMS is usually a 32-bit application. Answer at 21, lines 13-15.

However, the Examiner provides absolutely no backup or evidence to support these bald statements. For example, nowhere in the SEC reference does it state that LimiTrader is a 16-bit application. Similarly, nowhere in the Guterman reference does it state that its OMS is a 32-bit application. Examiner’s entire calculation of “available bandwidth” and “maximum users” is based on these unsupported premises.

Further, the Examiner’s Answer concedes that running an integrated OMS with even as few as 50 users over regular telephone lines might be suboptimal due to slowness and line noise. Answer at 22, lines 3-5. This is exactly Applicant’s point – that while it might be theoretically possible to combine Guterman with LimiTrader, doing so is not obvious because it would make the combined system suboptimal and slow. See also Appeal Brief at 13-14.

V. THE ANSWER DOES NOT ADDRESS, OR TRY TO REBUT, APPLICANT’S ARGUMENT THAT GRAFTING AN INTEGRATED OMS ONTO THE FRONT END OF LIMITTRADER WOULD DISABLE LIMITTRADER’S IMPORTANT INDIVIDUALIZED FEATURES.

The Examiner’s Answer does not at all address, or try to rebut, Applicant’s argument that grafting an integrated OMS onto the front end of LimiTrader would disable LimiTrader’s

important individualized features (advice on a bid or offer, assistance with a computer or communications problem, and market information), and thus render LimiTrader unsatisfactory for its intended purpose. See Appeal Brief at 11-13. This is an entirely different argument from the argument discussed above in Section IV.

Applicant's un-rebutted argument is supported by multiple passages in the SEC reference (see page 9 at n2; page 5 at n10), and by the declaration of Steven Levy, an expert in Order Management Systems from their very inception, through the May 1999 priority date of this application, and up to the present.

VI. THE ANSWER PROVIDES NO ADDITIONAL SUPPORT FOR THE FINAL OFFICE ACTION'S BALD MOTIVATIONAL STATEMENT, AND DOES NOT REBUT APPLICANT'S ARGUMENT THAT THE MOTIVATIONAL STATEMENT DOES NOT APPLY TO CLAIMS 52, 62, 105, 115, 148, AND 158.

The Examiner's Answer provides no additional support for the Final Office Action's vague motivational statement that:

"It would have been obvious to a person of ordinary skill in the art to combine the OMS teachings of Guterman with the disclosure of the SEC to allow users to manage their decks and to improve the accuracy of communications between the trading floor and customers."

Instead, the Answer merely repeats this motivation, along with some broad guidelines about motivation in general. Answer at 22, lines 7-19. Neither the Final Office Action nor the Answer explain what "decks" are, and how management of them would be enabled by receiving the indications of interest from an order management system integrated with the central processing system. Both also fail to explain why a user could not manage such "decks" with LimiTrader's existing dial-up system.

Moreover, neither the Final Office Action nor the Answer explain how communications accuracy would improve by receiving the indications of interest from an order management system integrated with the central processing system. Both also fail to explain why LimiTrader's existing dial-up system somehow lacks communications accuracy, and thus needs improvement.

Further, the Answer does not at all address Applicant's argument that the motivational statement in the Final Office Action does not even apply to Claims 52, 62, 105, 115, 148, and 158 and their dependent claims – because those claims contain absolutely no reference to an order management system. See also Appeal Brief at 14.

VII. THE AGREEMENTS REACHED IN THE 2/12/2008 INTERVIEW ARE VALID, AND THE EXAMINER CANNOT SIMPLY RENEGE ON THEM IN HIS ANSWER.

The Examiner's Answer attempts to abrogate the agreements reached in the 2/12/2008 interview, stating that "no such agreement was reached". Answer at 19. This is troubling, because several agreements were indeed reached between the Examiners and Applicant at the interview. While *ultimate* agreement as to allowability was not reached, the factual agreements that *were reached* – concerning differences between the LimiTrader system and the claims in the '535 application, implications for the LimiTrader system if an Order Management System (OMS) were integrated with it, and whether an OMS could function well over regular phone lines – are very relevant to the patentability of the claims.

The agreements were reached during a comprehensive discussion of the rejections contained in the Final Office Action, among Ojo Oyebisi, Examiner; Ella Colbert, Senior Examiner; Jarrett Collins, Manager of the Applicant; and John Galbreath, Applicant's attorney. During the discussion, Mr. Galbreath kept a running log for the group of the agreements reached. Before writing down each point of agreement, he checked with Mr. Oyebisi and Ms. Colbert to be sure they agreed with the precise language to be used, and repeated that language as the point of agreement was logged.

At the end of the interview, Mr. Oyebisi stated that he would go write up the Interview Summary, and took the Agreement Sheet with him. He returned with copies of the Interview Summary and Agreement Sheet, and distributed copies of each to the interview participants. After reviewing the Interview Summary, Mr. Galbreath asked Mr. Oyebisi why he did not refer to the Agreement Sheet on the Interview Summary form. Mr. Oyebisi replied that it was not necessary to do so, because the Agreement sheet would be attached to the Interview Summary. Mr. Oyebisi pointed out that the Interview Summary form provides for such attachments.

While walking to the elevator after the interview, the participants discussed that even though agreement on final allowance had not yet been reached, much progress had been made by reaching the factual agreements on the Agreement Sheet.

Moreover, when the Interview Summary and Agreement Sheet were not promptly posted to the application file following the interview, Mr. Galbreath telephoned Mr. Oyebisi on at least three occasions to inquire about it. Mr. Oyebisi assured Mr. Galbreath that the Interview Summary would soon be posted, and that the Agreement Sheet would be attached. Then on March 26, 2008, the Office posted the Interview Summary and the Agreement Sheet to the application file. This posting is evidenced by the three 3/26/2008 docket entries. Applicant did not make these docket entries – rather, the Office did. (Please note that for some reason, the Office labeled as an "NPL Document" the Agreement Sheet it posted on 3/26/2008.)

Also on 3/26/2008, the Office mailed the Interview Summary to Applicant. In this mailing, the Agreement Sheet was attached as part of the Interview Summary.

Further, Applicant's after-final amendment filed 2/22/2008 extensively discussed the agreements reached during the interview, and also contained an Applicant Interview Summary pursuant to MPEP § 2281 (see Amend. I at 25, 27, 28, 29, & 30). The Applicant Interview Summary stated that agreements were reached on several factual questions that were key determinants of patentability, and that the agreements had been appended to the Interview Summary. In the Advisory Action mailed 3/28/2008, Examiner did not dispute in any way the agreements that were reached, but instead merely stated that "the newly added limitation i.e., preventing knowledge of any given prospective transaction entry, raise new issues that would require further search".

To substantiate the above, Applicant has appended as Exhibits 1-6: declarations from Mr. Collins and Mr. Galbreath; telephone records showing the calls Mr. Galbreath made to Mr. Oyebisi inquiring about the non-posting of the Interview Summary to the application file; an excerpt from the Office's Employee Locator system showing Mr. Oyebisi's number as 571-272-8298; the Interview Summary and Agreement Sheet that the Office mailed to Applicant on 3/26/2008; and even the envelope in which the Interview Summary and Agreement Sheet were mailed.

In sum, the factual conclusions in the agreements make sense, as demonstrated in Applicant's Appeal Brief and this Reply Brief. They are supported by the SEC/Limitrader and Guterman references, and by Applicant's specification and claims. The agreements were reached in good faith, after comprehensive discussion, in the 2/12/2008 interview. It is only now – in the Appeal Answer – that Examiner attempts to abrogate them.

Respectfully,

/John A. Galbreath/

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Attorneys for Applicant

EXHIBIT 1, p. 1

In the United States Patent and Trademark Office
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Seria. Number: 10/032,535
Appn. Fild: 01/02/2002
Applicant(s): John Shaw et al.
Appn. Title: Method and System for Facilitating Secure Transactions
Examine./GAU: Oyebisi, Ojo / 3696

Declaration of D. Jarrett Collins

I, D. JARRETT COLLINS, being over the age of eighteen and competent to testify, make the following declaration:

1. I am the Manager of Stonefish LLC ("Stonefish"), the applicant and assignee in patent application # 10/032,535 ("the '535 application").
2. I participated in the February 12, 2008 in-person interview at the USPTO. Also participating were Ojo Oyebisi, Examiner; Ella Colbert, Senior Examiner; and John Galbreath, the attorney prosecuting the '535 application.
3. The interview was a comprehensive, well-organized discussion of the rejections contained in the Final Office Action. Several agreements were reached on differences between the LimiTrader system and the claims in the '535 application, implications for the LimiTrader system if an Order Management System (OMS) were integrated with it, and whether an OMS could function well over regular phone lines.
4. During this discussion, Mr. Galbreath kept a running log for the group of the agreements reached. Before writing down each point of agreement, he checked with Mr. Oyebisi and Ms. Colbert to be sure they agreed with the precise language to be used, and repeated that language as the point of agreement was logged.

EXHIBIT 1, p. 2Appn. Nu nber 10/032,535

(Shaw, John)

GAU 3696

Declaration of D. Jarrett Collins

2

5. At the end of the interview, Mr. Oyebisi stated that he would go write up the Interview Summary, and took the Agreement Sheet with him. He returned with copies of the Interview Summary and Agreement Sheet, and distributed copies of each to the interview participants.
6. While walking to the elevator after the interview, the participants discussed that even though agreement on final allowance had not yet been reached, much progress had been made by reaching the key agreements on the Agreement Sheet.
7. On March 27, 2008, Mr. Galbreath emailed me an update, stating that after many reminders from him, the USPTO had finally posted the Interview Summary and Agreement Sheet to the application file.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.



D. Jarrett Collins9/30/08

Date

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Applicant(s): John Shaw et al.

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Examiner/GAU: Oyebisi, Ojo / 3696

Declaration of John A. Galbreath

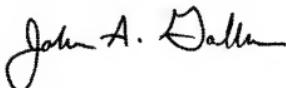
I, JOHN A. GALBREATH, being over the age of eighteen and competent to testify, make the following declaration:

1. I am the attorney of record for patent application # 10/032,535 ("the '535 application").
2. I participated in the February 12, 2008 in-person interview at the USPTO. Also participating were Ojo Oyebisi, Examiner; Ella Colbert, Senior Examiner; and Jarrett Collins, Manager of applicant Stonefish LLC.
3. The interview was a comprehensive, well-organized discussion of the rejections contained in the Final Office Action. Several agreements were reached on differences between the LimiTrader system and the claims in the '535 application, implications for the LimiTrader system if an Order Management System (OMS) were integrated with it, and whether an OMS could function well over regular phone lines.
4. During this discussion, I kept a running log for the group of the agreements reached. Before writing down each point of agreement, I checked with Mr. Oyebisi and Ms. Colbert to be sure they agreed with the precise language to be used, and repeated that language as the point of agreement was logged.

EXHIBIT 2, p. 2

5. At the end of the interview, Mr. Oyebisi stated that he would go write up the Interview Summary, and took the Agreement Sheet with him. He returned with copies of the Interview Summary and Agreement Sheet, and distributed copies of each to the interview participants.
6. After reviewing the Interview Summary, I asked Mr. Oyebisi why he did not refer to the Agreement Sheet on the Interview Summary form. He replied that it was not necessary to do so, because the Agreement sheet would be attached to the Interview Summary. He also pointed out that the Interview Summary form provides for such attachments.
7. While walking to the elevator after the interview, the participants discussed that even though agreement on final allowance had not yet been reached, much progress had been made by reaching the key agreements on the Agreement Sheet.
8. When the Interview Summary and Agreement Sheet were not promptly posted to the application file following the interview, I telephoned Mr. Oyebisi on at least three occasions to inquire about it. Mr. Oyebisi assured me that the Interview Summary would soon be posted, and that the Agreement Sheet would be attached.
9. I received the Interview Summary in the mail, shortly after the Office mailed it on 3/26/2008. I personally opened the mailing envelope, and observed that the Agreement Sheet was attached as part of the Interview Summary.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.



John A. Galbreath

10/8/08

Date

COG7200108 JOHN GALBREATH

Service Number Detail

Invoice # 73406672

41066727431122 Calling Card						
Date	Time	Minutes	Called Number	Location	Call Charges	
1 02/26/08	2:39 PM	6.0	(765) 225-8406	Anoka, MN	\$0.59	2 02/26/08 4:25 PM 1.3 (443) 610-6278 Baltimore
1 03/04/08	1:48 PM	1.3	(571) 272-8286	Alexandria, VA	\$0.13	4 03/04/08 2:29 PM 2.4 Call Originated From (410) 666-7273 (207) 361-4199 York
5 03/05/08	11:26 AM	2.6	(571) 272-5608	Alexandria, VA	\$0.26	6 03/05/08 11:23 AM 7.9 (571) 272-179 Alexandria
7 03/07/08	8:46 AM	1.0	Call Originated From (410) 666-7274	VA	\$0.10	8 03/10/08 11:44 AM 10.9 Call Originated From (410) 666-7274 (301) 593-8253 Silver Spg
9 03/13/08	6:43 AM	0.5	011-41-223483393	Geneva, Switzerland	\$0.03	10 03/13/08 9:20 AM 2.4 011-41-223483393 Geneva, Switzerland
11 03/14/08	8:35 AM	1.1	Call Originated From (410) 666-7273	VA	\$0.11	12 03/14/08 1:23 PM 14.7 Call Originated From (410) 628-7770 (410) 598-0091 Baltimore
13 03/14/08	5:10 PM	12.8	Call Originated From (410) 666-7273	New York, NY	\$1.25	14 03/17/08 9:48 AM 0.8 Call Originated From (410) 666-7273 (410) 983-3806 Baltimore
15 03/19/08	9:14 AM	4.7	(571) 272-2805	Alexandria, VA	\$0.46	16 03/19/08 9:24 AM 20.8 Call Originated From (410) 666-7274 (647) 426-1268 Toronto, ON
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94.2 Minutes for COG7200108				\$7.87		

Service Number Detail

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27 03/18/08	11:03 AM	2.0	(571) 273-3260	Alexandria	VA	\$0.10	28 03/19/08	8:55 AM	1.0	(571) 272-2640	Alexandria	VA	\$0.05
29 03/19/08	9:00 AM	2.0	(571) 222640	Alexandria	VA	\$0.10	30 03/20/08	4:33 PM	2.0	(571) 272-3290	Alexandria	VA	\$0.10
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35 03/25/08	10:12 AM	4.0	(941) 963-4140	Sarasota	FL	\$0.20	36 03/26/08	11:20 AM	8.0	(850) 205-1988	Tallahassee	FL	\$0.39
37 03/27/08	10:02 AM	5.0	011-41-0223485656	Switzerland	SWITZERLAND	\$0.53	38 03/27/08	1:05 PM	1.0	(917) 445-7257	New York	NY	\$0.05
39 03/27/08	4:39 PM	1.0	(571) 272-2955	Alexandria	VA	\$0.05	40 03/29/08	7:08 AM	2.0	(602) 355-3328	Phoenix	AZ	\$0.10
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* Indicates a call originating from a payphone.



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1 Record found for Name: oyebisi

Employee	Phone	Extension	Office	Description
OYEBISI OJO O	(571)	272-8298	P/3696	GROUP ART UNIT 3696

Position Indicators following Names	(DIR) (DIRSEC) (HSLIE) (RCPTN) (SPE)	Director Director's Secretary Head Legal Instruments Examiner Receptionist Supervisory Patent Examiner
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UNITED STATES PATENT AND TRADEMARK OFFICE

EXHIBIT 5, p. 1

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,535	01/02/2002	John C. Shaw	054253-5001	5955
24271	7590	03/26/2008	EXAMINER	
JOHN ALEXANDER GALBREATH			OYEBISI, OJO O	
2516 CHESTNUT WOODS CT				
REISTERSTOWN, MD 21136			ART UNIT	PAPER NUMBER
			3696	
			MAIL DATE	DELIVERY MODE
			03/26/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Interview Summary	Application No.	Applicant(s)
	10/032,535	SHAW ET AL.
	Examiner	Art Unit
OJO O. OYEBOISI	3696	

All participants (applicant, applicant's representative, PTO personnel):

(1) OJO O. OYEBOISI. (3) Ella Colbert.
 (2) JOHN ALEXANDER GALBREATH. (4) _____.

Date of Interview: 12 February 2008.

Type: a) Telephonic b) Video Conference
 c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.
 If Yes, brief description: _____.

Claim(s) discussed: 1 and 52.

Identification of prior art discussed: SEC reference and Guterman.

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: The applicant's representative has further described the claimed invention and pointed out key features that distinguish the claimed invention from the prior arts. The applicant's argument would be considered upon filing a formal response to the last office action.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

/Ella Colbert/
 Primary Examiner, Art Unit 3696
 Examiner's signature, if required

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Agreements

- The UniTrader system does not have the message - sending component of the invention.
- The UniTrader system does not meet the data security component of the invention,
.. when "restricting access" is changed to
"preventing knowledge" in the claims

- The individualized features in UniTrader would be cut off if an integrated ONS was grafted onto it.
- Regarding phones^{lines}, it is possible to ~~not~~ make an ONS function over regular phone lines, but it would be sub-optimal + slow.

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